

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CARL DEAN EDWARDS,

Plaintiff,

vs.

NORTH LAS VEGAS DETENTION  
CENTER, et al.,

Defendants.

Case No. 2:06-CV-01455-RLH-(RJJ)

**ORDER**

Petitioner has paid the initial partial filing fee (#5). The Court has reviewed the Complaint. It will dismiss Count I and serve the Complaint upon Defendants.

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the Court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. North Star Intern. v. Arizona Corp. Comm’n, 720 F.2d 578, 580 (9th Cir. 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a pro se complainant are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

1 Plaintiff is an inmate at the North Las Vegas Detention Center. He is currently a  
2 defendant in a criminal action before this Court, United States v. Edwards, Case No. 2:05-CR-  
3 00154-KJD-(LRL). Counsel represents Plaintiff in that action. In Count I, Plaintiff alleges that  
4 Defendants Paresi, Forti, Kitchen, and Pacheco, who are jail administrators or officers, have  
5 infringed upon his right of access to the courts by denying him access to the jail's law room and its  
6 research computer. To establish a violation of the right of meaningful access to the courts, Plaintiff  
7 must show that he suffered an actual injury. Lewis v. Casey, 518 U.S. 343, 348-49 (1996). As a  
8 criminal defendant, Plaintiff has the right to retain counsel or to have counsel appointed to represent  
9 him at no cost if he was indigent. Gideon v. Wainwright, 372 U.S. 335, 342-45 (1963). Appointed  
10 counsel provides Plaintiff with a meaningful avenue of access to this Court. Storseth v. Spellman,  
11 654 F.2d 1349, 1353 (9th Cir. 1981). Because counsel represents Plaintiff, he cannot show an  
12 actual injury. Amendment of Count I could not cure this defect, and the Court dismisses it. See  
13 Noll v. Carson, 809 F.2d 1446, 1448 (9th Cir. 1987).

14 Plaintiff has also submitted a Motion for Reconsideration of Order (#3), in which he  
15 asks the Court to review three matters concerning the Order (#2) of Magistrate Judge Robert J.  
16 Johnson. First, Plaintiff objects to the direction that he pay the filing fee. As a prisoner, the law  
17 requires Plaintiff to pay the filing fee in monthly installments. 28 U.S.C. § 1915(b). This objection  
18 is also moot because Plaintiff has paid the initial partial filing fee (#5). Second, Plaintiff objects to  
19 the statement that subpoenas will not be issued at government expense. Section 1915 does not  
20 authorize the Court to waive a subpoena's witness fees. Tedder v. Odel, 890 F.2d 210, 211-12 (9th  
21 Cir. 1989). Third, Plaintiff asks the Court to order the North Las Vegas Detention Center to allow  
22 him to spend fifteen to twenty hours per week in the jail's legal research room. As noted above, this  
23 is unnecessary because representation by counsel satisfies Plaintiff's right of access to the courts.

24 Plaintiff has also submitted a Petition for Compliance (#4), in which he alleges that  
25 Defendant Kitchen has not complied with the order to debit his account for payment of the initial  
26 partial filing fee. This Petition (#4) is moot because the Court has received the fee (#5).

27 IT IS THEREFORE ORDERED that the Clerk of the Court shall file the Complaint,  
28 issue summons to the named defendants herein, and deliver same to the U.S. Marshal for service.

1 Plaintiff shall have twenty (20) days in which to furnish to the U.S. Marshal the required Forms  
2 USM-285. Within twenty (20) days after receiving from the U.S. Marshal a copy of the Form  
3 USM-285 showing whether service has been accomplished, Plaintiff must file a notice with the  
4 Court identifying which defendants were served and which were not served, if any. If Plaintiff  
5 wishes to have service again attempted on an unserved defendant(s), then a motion must be filed  
6 with the Court identifying the unserved defendant(s) and specifying a more detailed name and/or  
7 address for said defendant(s), or whether some other manner of service should be attempted.  
8 Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be accomplished within  
9 one hundred twenty (120) days from the date that the Complaint was filed.

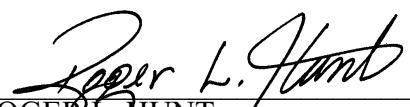
10 IT IS FURTHER ORDERED that henceforth, Plaintiff shall serve upon defendants  
11 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,  
12 motion or other document submitted for consideration by the court. Plaintiff shall include with the  
13 original paper submitted for filing a certificate stating the date that a true and correct copy of the  
14 document was mailed to the defendants or counsel for the defendants. The court may disregard any  
15 paper received by a district judge or magistrate judge which has not been filed with the Clerk, and  
16 any paper received by a district judge, magistrate judge or the Clerk which fails to include a  
17 certificate of service.

18 IT IS FURTHER ORDERED that Count I is **DISMISSED** for failure to state a claim  
19 upon which relief can be granted.

20 IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration of Order  
21 (#3) is **DENIED**.

22 IT IS FURTHER ORDERED that Plaintiff's Petition for Compliance (#4) is  
23 **DENIED** as moot.

24 DATED this 16<sup>th</sup> day of January, 2007.

25  
26   
27 ROGER L. HUNT  
28 Chief United States District Judge